

Institute for Public Representation

Georgetown Law
600 New Jersey Ave. NW
Washington, DC 20001
202.662.9535 (phone)
202.662.9634 (fax)



August 20, 2012

via electronic filing

Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

Re: **Notice of *Ex Parte* Presentation**
MB Docket No. 11-154
CG Docket Nos. 10-213 and 10-145
WT Docket No. 96-198

Dear Ms. Dortch:

On Thursday, August 16, 2012, Claude Stout of Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), Andrew Phillips and Shane Feldman of the National Association for the Deaf (NAD), Dr. Christian Vogler, Ph.D. of the Technology Access Program at Gallaudet University (TAP) and Blake Reid of the Institute for Public Representation (IPR) at Georgetown Law (collectively, "Consumer Groups") met separately with Lyle Elder of Chairman Genachowski's office and Priscilla Argeris of Commissioner Rosenworcel's office. I spoke to Eliot Greenwald of the Consumer and Governmental Affairs Bureau about the meetings in person the same day and by phone the following day, August 17, 2012. Also on August 17, 2012, Mr. Stout submitted an e-mail regarding the meeting to Mr. Elder, Ms. Argeris, Kris Monteith of the Media Bureau, and Greg Hlibok and Karen Peltz Strauss of the Consumer and Governmental Affairs Bureau.

The Consumer Groups discussed our opposition to pending petitions for waivers from the Commission's advanced communications services ("ACS") requirements filed by the Consumer Electronics Association (CEA), the Entertainment Software Association (ESA), and the National Cable & Telecommunications Association (NCTA).¹ We expressed concern

¹ CEA Petition for Waiver, CG Docket Nos. 10-213 & 10-145, WT Docket No. 96-198 (Mar. 22, 2012); ESA Petition for Waiver, CG Docket No. 10-213

that the petitioners are abusing the CVAA's limited primary purpose waiver provision to collectively exclude people with disabilities from accessing the entire universe of increasingly convergent multi-purpose living room-based devices and services, potentially perpetuating a serious digital divide.² As an example, we pointed to advertising for Microsoft's Xbox 360 device, which highlights non-gaming "social" functions like "[s]end[ing] and receiv[ing] messages" as a primary purpose of the device ahead of other functionality such as games and movies:³



(Mar. 21, 2012); NCTA Petition for Waiver, CG Docket Nos. 10-213 & 10-145, WT Docket No. 96-198 (June 1, 2012).

² Mr. Stout discussed the potential for the divide to worsen as ACS technologies expand beyond the living room to the rest of consumers homes, as showcased in a conceptual video by Corning Incorporated. *A Day Made of Glass*, http://www.youtube.com/watch?v=6Cf7IL_eZ38 (last visited Aug. 15, 2012).

³ MICROSOFT, *Xbox Social*, <http://live.xbox.com/en-IE/Home> (last visited Aug. 17, 2012). "Social" appears before "Games" and "Movies" in the menu bar.

Primary purpose waivers should only be granted in the rare circumstance that petitioners are able to identify a class of devices that include common ACS functionality only incidental to a core purpose wholly unrelated to ACS—a standard not satisfied by any of the petitioned-for classes—and should not be utilized as a substitute for individualized determinations of achievability under Twenty-First Century Communications and Video Accessibility Act (CVAA).

We expressed our concern that the petitions are largely devoid of examples of how the covered classes of equipment and services share common ACS features and lack detailed explanations of why all equipment or services in the covered classes were not designed to be used primarily for ACS purposes. Petitioners, and not the Commission or the public, must shoulder the burden of demonstrating that waivers are actually necessary, particularly where a waiver will cover devices and services still in the design cycle whose attributes are wholly unknown to anyone other than their designers. Moreover, the petitioned-for class waivers are overly broad and threaten to exclude ordinary products designed primarily for ACS from the Commission's rules, plainly contravening the letter and spirit of the CVAA.

We reiterated also our opposition to the petitions for exemption from the Commission's IP closed captioning rules by some members of the Digital Media Association (DiMA).⁴ We noted the procedural flaws in the petitions, which we argued represented a meritless attempt to overturn the negotiated consensus of industry and consumer representatives of the Video Programming Accessibility Advisory Committee (VPAAC) and during the IP captioning rulemaking. We also noted the lack of unanimous support for DiMA's petitions from its own members, and in the case of its petition for exemption from the Commission's caption rendering rules, from other members of the industry. We further discussed the serious problems that would arise from the Commission's use of the individual exemption to promulgate categorical exemptions with vague assertions of commonality across the entire industry and no individual evidence of burden on the part of any particular entities.

Please contact me if I can provide any further information regarding this presentation.

⁴ DiMA Petitions for Temporary Partial Exemption or Limited Waiver of Digital Media Association, MB Docket No. 11-154 (May 8, 2012).

Respectfully submitted,

/s/

Blake E. Reid, Esq.

Counsel to TDI

Institute for Public Representation

Georgetown Law

600 New Jersey Ave. NW

Washington, DC 20001

202.662.9545

blake.reid@law.georgetown.edu

Cc:

Lyle Elder

Priscilla Argeris

Eliot Greenwald

Kris Monteith

Greg Hlibok

Karen Peltz Strauss